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Recent Developments: Williams v. State: Defense Counsel Must Have the Opportunity to Cross-Examine Laboratory Technicians Concerning Possible Contamination of DNA Tests

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Williams v. State

As forensic tests for deoxyribonucleic acid ("DNA") become more precise and more prevalent, the available defenses a defendant might have to counter the DNA acid evidence become more limited. In *Williams v. State*, 342 Md. 724, 679 A.2d 1106 (1996), the Court of Appeals of Maryland held that when the polymerase chain reaction test is used on DNA evidence, defense counsel must have the opportunity to cross-examine technicians concerning the possibility of laboratory contamination. In *Williams*, the Court of Appeals of Maryland reinforced the principle that vigorous cross-examination of expert witnesses should be allowed to assist the jury in determining how much weight to give to particular evidence.

When Jose Trias and his wife, Julie Gilbert, both successful attorneys, failed to appear at their offices on May 16, 1994, their co-workers became concerned. After several unsuccessful attempts to reach the couple at their weekend home in Annapolis, Gilbert's secretary contacted Ricky Cole, who had a key to the house. Upon arriving at the couple's home, Cole found a note taped to the door stating, "ON VACATION!! BE BACK 20 MAY." Cole also found Gilbert's Acura Legend missing. When he searched the house, Cole found Trias and Gilbert lying on their bed face down, both fatally shot in the head. Although there

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By Jennifer Loew

was no evidence of a break-in, the couple's automatic teller machine ("ATM") cards and jewelry were missing.

During the crime scene investigation, police found epithelial cells, consistent with those found inside of a human's mouth, on a drinking glass in the kitchen. The epithelial cells were sent to Cellmark Diagnostics, Inc. for DNA testing. The biologist at Cellmark tested the cells using a process called polymerase chain reaction ("PCR") and excluded the victims as the source of the DNA. The cells later matched DNA samples taken from the defendant.

Scotland Eugene Williams, the defendant, was arrested three days after the bodies were found. Security cameras at ATM machines had photographed Williams attempting to withdraw money using the ATM cards at several locations. The cameras also photographed Williams in an Acura Legend which resembled the decedent's

car.

When arrested, Williams had over \$2,000 in cash and was carrying a bag containing a crow bar, a can of mace, and a gold watch, later identified as belonging to Gilbert. A search of the defendant's home revealed handcuffs, bloodstained clothing, and brown cotton gloves made of fibers identical to fibers found on the tape of the "ON VACATION" sign.

Before trial, defense counsel made a motion to exclude the PCR test results on the ground that PCR testing has not attained general acceptance in the scientific community. After a two day hearing on the motion, the trial judge concluded that PCR is generally accepted as being reliable and denied the motion.

The jury convicted Williams of two counts of first degree murder, multiple counts of robbery with a deadly weapon, theft, burglary, and use of a handgun in the commission of a violent crime. At the capital sentencing hearing, Judge Lerner sentenced Williams to death. Pursuant to Section 414, Article 27 of the Annotated Code of Maryland, which provides automatic review of death sentences, the Court of Appeals heard the appeal. The court reversed Williams' murder convictions and remanded the case for a new trial. The burglary conviction was reversed based on the insufficiency of the evidence. Although the *Williams* court addressed more

than eight separate issues, only two evidentiary rulings applied to the DNA evidence.

First, the court of appeals reviewed the trial court's decision to admit the PCR test results. The court began its analysis by reviewing *Armstead v. State*, 342 Md. 38, 673 A.2d 221 (1996). *Williams* at 751, 679 A.2d at 1120. In *Armstead*, the court found that there are two ways in which courts may determine whether scientific evidence is admissible: (1) if permitted by statute; or (2) in the absence of a statute, if the proponent can show that the evidence is generally accepted in the scientific community. *Id.* at 750, 679 A.2d at 1120. To determine whether the evidence was permitted by statute, the *Williams* court looked to Maryland's Annotated Code which states that restriction fragment length polymorphism ("RFLP") testing is admissible but does not address PCR testing. *Id.* at 752, 679 A.2d at 1121 (citing MD. ANN. CODE., CTS. & JUD. PROC. § 10-915 (1995)).

Since PCR testing was not addressed by statute, the court then discussed whether PCR testing was generally accepted by the relevant scientific community. *Id.* at 752, 679 A.2d at 1120. Generally, courts apply the Frye-Reed test to establish the standard for general acceptance. *Id.* at 752, 679 A.2d at 1121 (citing *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923); *Reed v. State*, 283 Md. 374, 391 A.2d 364 (1978)). The *Williams* court, however, did not decide whether the PCR method of DNA

testing was admissible under the Frye-Reed test and noted that such a determination was not necessary for resolution of the case at bar. *Id.* Instead, the court stated that "given the rapidly developing scientific data on the reliability of the PCR method of DNA testing, we believe it might be premature to pass on the question based on the record from the initial hearing which is more than a year old." *Id.*

Next, the court of appeals addressed whether the trial court erred in restricting defense counsel's attempts to cross-examine the lab technician about the frequency of errors and contamination which occurs during PCR testing. *Id.* at 744, 679 A.2d at 1116. At trial, the State called Melissa Weber, the senior molecular biologist who performed the PCR test at Cellmark. Weber testified that the PCR test was used instead of the more established RFLP test because PCR testing can be done on smaller samples. *Id.* at 744, 679 A.2d at 1117. She also stated that RFLP testing can provide a "very specific match between two samples" *Id.* In contrast, PCR testing can only "narrow down a potential number of donors in one group." *Id.*

Weber testified that Cellmark subjects its technicians to blind proficiency tests from independent agencies to determine whether the technicians are performing the tests using proper procedures. *Id.* at 746, 679 A.2d at 1118. Cellmark technicians made no errors in any of the PCR proficiency tests. During cross-

examination, defense counsel asked Weber if there had been incidents of any contamination separate from the proficiency tests. Weber testified that there had been at least one occasion in which she had contaminated a sample. When the defense questioned Weber if she knew of incidents of contamination by other technicians in Cellmark, the State objected. After a bench conference, the trial judge sustained the objection. *Id.* at 749, 679 A.2d at 1119.

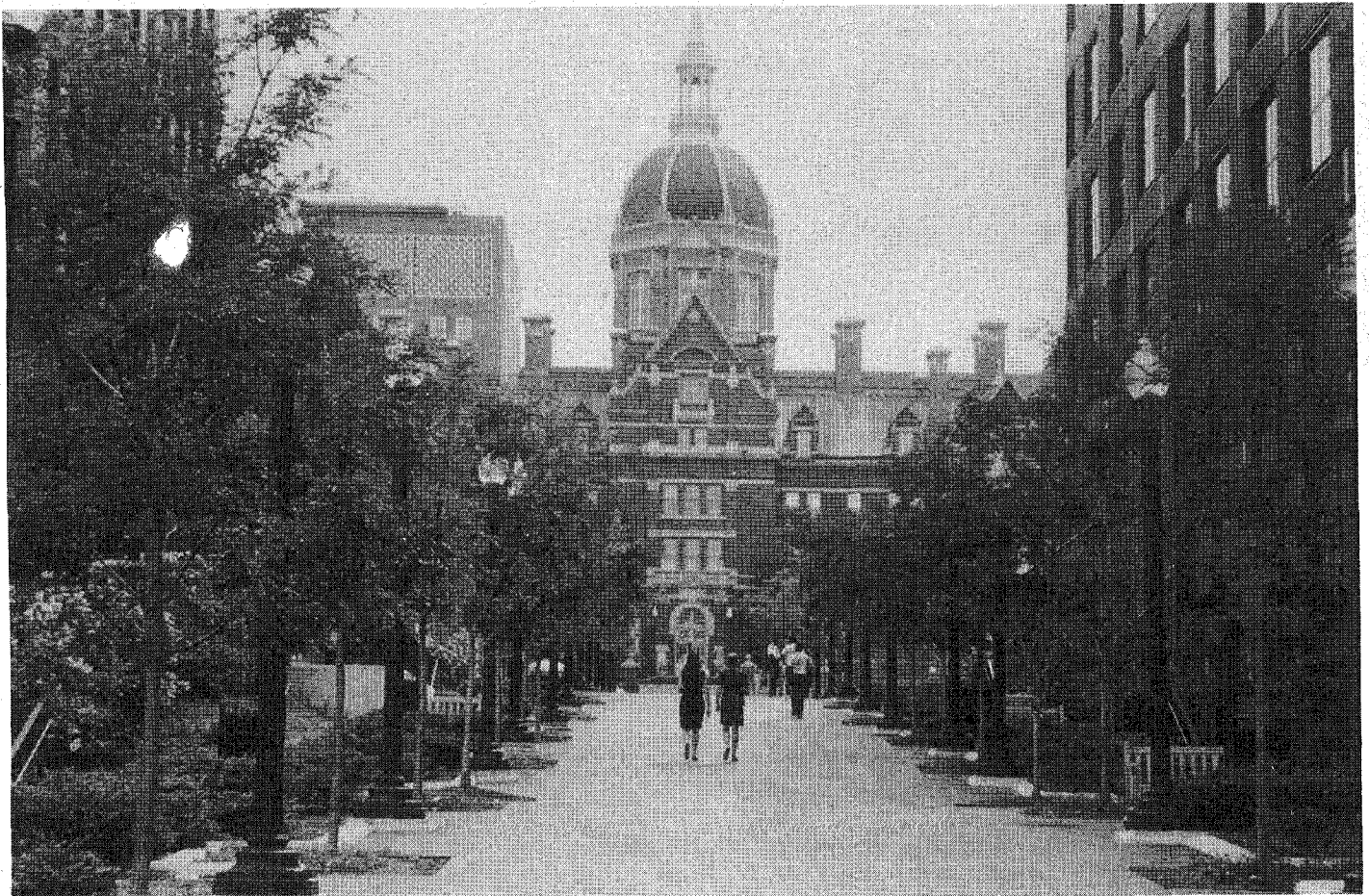
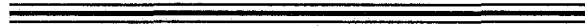
The State contended that the issue of whether other technicians had contaminated samples was irrelevant because Weber was the only technician who handled the sample in this case. The defense argued that through the use of this line of questioning, the jury would be able to understand how susceptible PCR tests are to contamination. The court held that the trial court's refusal "to allow [defense counsel] to question Weber about general problems of contamination of PCR samples at Cellmark deprived *Williams* of the full opportunity to cast doubt on the reliability of the DNA evidence." *Id.* at 754, 679 A.2d at 1122. The jury was not given sufficient information upon which to determine how much weight to give to the PCR test results. *Id.* at 751, 679 A.2d 1120. This holding was consistent with the *Armstead* ruling.

Williams and its predecessor *Armstead* effectively demonstrate the difficulties encountered when criminal prosecutions rely heavily on forensic evidence, particularly DNA testing. The Court of

Appeals of Maryland in *Williams* left open the issue of whether PCR testing will be admissible under the Frye-Reed test. With the increased use of DNA testing and medical expertise in criminal trials, it is apparent that the trial courts

will need to decide which tests are admissible and which are not. In light of the *Williams* decision, courts will allow defense attorneys as much latitude as possible in cross-examination of expert DNA

technicians. Both prosecution and defense attorneys, however, need to heighten their awareness of the evidentiary issues surrounding the various DNA tests and their susceptibility to contamination.



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